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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

FETSUGA, ROBERT M

ART UNIT PAPER NUMBER

3751

DATE MAILED: 08/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/715,004

Applicant(s)

STEWART, RONDALL

Examiner

Robert M. Fetsuga

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,5,6,8-14 and 16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,5,6,8-14 and 16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 November 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the subject matter set forth in claims 3 and 12, and the "coupled to" subject matter set forth in claim 9, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Applicant has not illustrated any subject matter capable of performing the recited function. Applicant failed in the response filed July 19, 2005 to address the subject matter of claim 9.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be

labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Proper antecedent basis for the "movable portion" set forth in claim 2 could not be found in the specification. Applicant is reminded claim terminology in mechanical cases should appear in the descriptive portion of the specification by reference to the drawing(s).

3. Claims 9, 11-14 and 16 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 1 recites a trap portion "fixedly attached to the bowl". This subject matter is not found in the originally filed disclosure and is therefore considered to be new matter.

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4. Claims 3 and 12 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Implementation of the subject matter set forth in the claims is neither taught by the instant disclosure nor evident to the examiner.

Applicant has not described any structure capable of performing the recited function.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

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6. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Lindroos et al.

The Lindroos et al. (Lindroos) reference discloses a toilet comprising: a bowl 1 including a trap 2; an enclosure including a movable portion 38; and a vent 39, as claimed. The valve 4 maintains a seal between the bowl 1 and sewer 3.

7. Claims 1, 2, 5, 6, 8, 9, 11, 13, 14 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Koch.

The Koch reference discloses a toilet comprising: a bowl 86 including a trap (Fig. 2); an enclosure/housing 11 including a movable portion/wall 13; a vent 91; and a sensor including a limit switch 76, as claimed. Re claim 8, the sensor actuates flushing a toilet bowl 36 only when the toilet bowl is sealed within the enclosure as discussed at page 2, column 2, lines 51-61. Re claim 9, the trap appears to be "fixedly attached" in the same sense as applicant's trap is disclosed to be.

8. Claims 1, 2, 5, 6, 8, 9, 11, 13, 14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koch and Fergusson.

The Koch reference discloses a toilet comprising: a bowl 36; an enclosure/housing 11 including a movable portion/wall 13; a vent 91; and a sensor including a limit switch 76. Re claim

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8, the sensor actuates flushing only when the bowl is sealed within the enclosure as discussed at page 2, column 2, lines 51-61. Therefore, Koch teaches all claimed elements except for the bowl including a trap.

Although the bowl of the Koch toilet does not include a trap, as claimed, attention is directed to the Fergusson reference which discloses an analogous toilet which further includes a bowl 27 having a trap 28. Therefore, in consideration of Fergusson, it would have been obvious to one of ordinary skill in the toilet art to associate a trap with the Koch toilet in order to retain water in the bowl. Re claim 9, the trap appears to be "fixedly attached" in the same sense as applicant's trap is disclosed to be.

9. Claims 3 and 12, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Koch and Fergusson as applied to claims 1 and 9 above, and further in view of Fernald, Sr.

Although the vent of the Koch toilet does not inhibit flow, as claimed, attention is directed to the Fernald, Sr. (Fernald) reference which discloses an analogous toilet which further includes a vent 36 that inhibits flow (via 72). Therefore, in consideration of Fernald, it would have been obvious to one of

ordinary skill in the toilet art to associate flow inhibition with the Koch toilet in order to facilitate air flow control.

Applicant argues at page 10 of the response "Koch does not mention inhibiting flow out of the space". The examiner can not agree, and notes the discussion at page 3, lines 29-31, in Koch. Applicant argues at pages 10-11 of the response Fernald "teaches away" from providing a flow inhibiting vent. The examiner can not agree, and notes the Fernald vent inhibits flow (via 72) away from the toilet.

10. Applicant's remarks have been fully considered and either have been previously addressed or are not deemed persuasive in view of the prior art as specifically applied in light of the level of skill in the pertinent art.

11. Applicant is referred to MPEP 714.02 and 608.01(o) in responding to this Office action.

12. The grounds of rejection have been reconsidered in light of applicant's arguments, but are still deemed to be proper.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action

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is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

13. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 571/272-4886 who can be most easily reached Monday through Thursday.

A handwritten signature in black ink, appearing to read 'Robert M. Fetsuga', is written above the printed name.

Robert M. Fetsuga
Primary Examiner
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